

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**CRISIS CENTER INCORPORATED
DOCKET NO. 29-2003-0159**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED ORDER**

An administrative hearing was held on Tuesday, July 22, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Crisis Center, Inc., was represented by Katrina M. Clingerman, Ice Miller, One American Square, Box 82001, Indianapolis, IN 46282-0002. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of \$13,250. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC 4-32-8-5.

SUMMARY OF FACTS

- 1) The Petitioner is an Indiana nonprofit corporation and conducts licensed charitable gaming events pursuant to IC 4-32.
- 2) The Petitioner is required to pay charitable gaming fees pursuant to IC 4-32-11.
- 3) Such fees are calculated and paid based upon Petitioner's total gross revenues from allowable events and related activities during the preceding year.
- 4) The Indiana Department of Revenue initiated an audit investigation of the Petitioner.
- 5) On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of \$13,250.

FINDINGS OF FACTS

- 1) On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of \$13, 250.
- 2) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of \$2,424,279 for the year ending 1999, and reported only \$1,951,240 to the Department. (Record at 13).
- 3) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of \$2,325,817 for the year ending 2000, and reported only \$1,845,453 to the Department. (Record at 13).
- 4) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of \$2,038,108 for the year ending 2001, and reported only \$1,542,533 to the Department. (Record at 14).
- 5) Petitioner's additional charity gaming license fees owed as a result of underreported gaming fees amounted to \$13,250.
- 6) The Petitioner's witness stated under oath that they did not have any evidence supporting its argument from the years in question. (Record at 25).
- 7) Petitioner stated that he shipped the games with serial number errors back to the wholesaler, and that he, "had no reason to document." (Record at 25).
- 8) Department's counsel upon cross-examination asked, "But yet you didn't record the errors on the documents you gave to the auditors. Correct?" Petitioner's witness responded, "Correct." (Record at 28).
- 9) Petitioner's counsel then went on to state regarding their exhibits, "We would submit that these are submitted as examples. We would not assert that they do come from the audit period. But the Petitioner had no reason to keep examples of this sort from the audit period until the audit had been completed and these issues were raised." (Record at 33).
- 10) Petitioner's witness was asked by the Administrative Law Judge, "Do you keep track of the serial numbers of the boxes you send back and the replacement boxes that you receive?" The witness responded, "I will beginning after this is concluded because I see where it's necessary, but, no, I have not." (Record at 36).

STATEMENT OF LAW

- 1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.

- 2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
- 4) "It is reasonable...to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 5) IC 4-32-11-1 states, "The department shall charge a license fee to an applicant under this article."
- 6) IC 4-21-11-3 provides, "The license fee that is charged to a qualified organization that renews the license must be based on the total gross revenue of the qualified organization from allowable events and related activities in the preceding year or, if the qualified organization held a license under IC 4-32-9-6 through IC 4-32-9-10, the fee must be based on the total gross revenue of the qualified organization from the preceding event and related activities..."
- 7) IC 4-32-9-17 provides in pertinent part, "A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article. A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department."

CONCLUSIONS OF LAW

- 1) On April 2, 2003, based upon an Indiana Department of Revenue audit investigation, the Petitioner was assessed additional charity gaming license fees in the amount of \$13,250 for the years 1999, 2000, and 2001.
- 2) Petitioner, a qualified organization, failed to maintain accurate records of all its financial aspects surrounding the sale of pulltabs for the audit years in question under IC 4-32.
- 3) Petitioner, a qualified organization, also failed to not only make but keep accurate reports of all financial aspects regarding the sale of its pulltabs for the audit years in question under IC 4-32.
- 4) Petitioner failed to provide records in support of its appeal for the audit years in question.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

Petitioner's appeal is denied.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge